



## **DEPARTMENT OF JUSTICE**

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Manila

## **SPEECH**

**“The Imperative for Philippine Criminal Justice System  
Reform, Achieving Effectiveness and Equity”**

by

**LEILA M. DE LIMA**  
*Secretary*

Dr. Emmanuel C. De Guzman, Dean Gemy Lito L. Festin,  
professors of law and members of the academe, fellow lawyers and  
students, ladies and gentlemen, good afternoon!

As the term of the present Administration winds down, I  
cannot help but be nostalgic and reflective of all that has happened  
in the last five years and seven months, and about life in general. I  
have a feeling it might be the same sensation that members of the

PUP family are experiencing right now, as you celebrate certain milestones of this esteemed institution.

Part of it is the realization that, for better or for worse, we are not completely the same persons we were when we first joined our respective institutions. For my part, it means that my vision of the criminal justice system has become simultaneously clearer and more complex.

As a lawyer and a law school professor, I have never harbored any illusion that administering justice is anything but a truly demanding and complicated responsibility. But, I can tell you – you will never truly, deeply and fundamentally understand how our justice works and, yes, *fails*, until you see the whole breadth and scope of it from the shoes of the Secretary of Justice, and feel the weight of the responsibility of investigating and prosecuting offenses against the law, defending the indigent, protecting witnesses, protecting our country from foreign criminal elements, preventing fugitives from fleeing from justice, and administering the correction and rehabilitation of offenders.

More than half a decade's worth of experience has taught me, not just what honest, hard-working, competent and courageous people can accomplish under the present system, but also the challenges that limit their potential to be effective, as well as what reforms must be done in order to overcome these challenges and remove those limitations.

When I assumed my position at the Department of Justice back in 2010, President Aquino gave me clear marching orders: deliver true and complete justice for all.

I had to ask myself if this was possible. At the time, each of the five pillars of the criminal justice system - law enforcement, prosecution, courts, corrections and the community – had yet to come to terms with their strengths, weaknesses, challenges and opportunities. In order to achieve “true and complete justice for all”, each pillar has to function like parts in a well-oiled machine: strong on its own but acting in coordination with a larger whole.

What was merely a possibility then is slowly but surely becoming the reality of today. In just five short years, key reforms to the criminal justice system were introduced across the board.

I have grouped these reforms into three areas: reforms in the institution, in the human factor and in policy and legal reforms.

## **I. Institutional reforms**

At the very outset, we realized that reforming the National Prosecution Service (NPS) and the National Bureau of Investigation (NBI) was key to approaching the problems in the criminal justice system. So it was in those two agencies that we pinpointed where to start.

Institutional problems are perhaps among the easiest to identify. Solutions to these types of problems usually involve the efficient, effective and sustainable use of limited government resources. Manpower is one such limited resource.

As it stands, we only have a total of **2,303 prosecutor positions** in the NPS. Though this may seem like a large number, you must bear in mind that these 2,303 prosecutor positions serve an estimated population of more than 100 million, are spread out over fifteen regions, and are responsible for thousands of pending cases of varying complexity.

Out of these total available prosecutor positions, only 70 to 75% are currently filled. Although the Office of the President has been releasing batches of appointments, we are still far from achieving full capacity due to other turnover factors, such as the retirement or appointment to other positions of our prosecutors.

To deal with this shortage, we established a number of Task Forces and special investigation teams wherein prosecutors with proven integrity and diligence are tasked with multiple assignments. Although this setup stretches the abilities of our prosecutors, we believe that this system encourages teamwork, creates support systems, and, more importantly, builds capacity through exposure.

Some of these Task Forces include those on Intellectual Property Piracy, Trafficking in Persons, Terrorism, Smuggling, Money Laundering, Human Rights and Extra-Legal Killings, Financial Fraud and Bangko Sentral ng Pilipinas-related cases, Securities and Business Scams, Bureau of Internal Revenue-related cases, Illegal

Drugs, Illegal Recruitment, Arson, Carnapping, Kidnapping and Hazing.

Another NPS and NBI reform principle that I have introduced is the importance of re-evaluating and re-focusing **the role of prosecutors in the case build-up and evidence-gathering stage.**

The reality is that even though thousands of cases remain pending before the courts, many more cases do not reach the trial stage or, even if they do, do not result in conviction due to the absence of sufficient and admissible evidence. I set out to address this dilemma by fostering a collaborative, active and pro-active relationship between investigators and prosecutors, especially for complex cases and cases of great public interest, such as the Mamasapano Incident, the Zamboanga Siege, the Lahad Datu Stand-Off, the Amalilio and Rasuman Fund Scams, the so-called "Sex-for-Flight Scam", and alleged Illegal Mining and Illegal Logging Activities. Furthermore, we constituted special joint NPS-NBI investigation teams composed of prosecutors and investigators, knowing that investigators in the case build-up stage will benefit from the guidance and perspective of prosecutors.

Of course, while I wanted prosecutors to take an active role in the case build-up stage, I was, at the same time, very aware that we needed to preserve the impartiality of those who will undertake that task. Thus, I made sure that a prosecutor who acted as part of the NPS-NBI investigation team would take no part in the preliminary investigation of the case, or in resolving any subsequent appeals.

We initially encountered resistance from the old-schoolers who believed that prosecutors are akin to judges and thus should not be involved in case build-up. However, we stood firm in our belief that the prosecution of criminal offenses is an executive function and that the failure to file cases in court is just as bad as losing those that actually end up filed in court.

We also established close **coordination among the NPS, the NBI, the Bureau of Immigration, and other concerned law enforcement agencies in ensuring that those who stand accused of offending our criminal laws do not evade justice.**

We established communications and coordination mechanisms that would help facilitate the exchange of real-time information, and thus prevent fugitives from slipping through our fingers. (We have thought of ILBO as a necessary substitute for HDO/WLO, the issuance of which by the SOJ has been TRO'd by the SC)

However, I do believe that the best way we can prevent the flight of fugitives and, in a more general sense, catch those who should be made to face charges in court, is through the **National Justice Information System (NJIS)**, the agreement for which was signed on 28 May 2015 by the Department of Justice and the Department of Interior and Local Government.

The NJIS will establish an integrated and accessible criminal justice information platform to improve the speed and efficiency of justice processes. It will be implemented through the following three clusters in the justice system: 1) Corrections cluster, 2) Law Enforcement, Prosecution and Defense Cluster, and 3) legal Service.

The first phase of the NJIS seeks to integrate the various parts of the criminal justice system via the creation of a data exchange mechanism across agencies, departments and branches, thus facilitating the sharing of real-time information, on they which they could base their respective and collective actions.

Other reforms initiated are multi-institutional ones, involving not just DOJ agencies.

The first is with the Philippine National Police (PNP) under the Department of the Interior and Local Government. Under the **police-prosecutor collaboration**, the prosecution service took police officers to a new frontier in their mandate of policing the community. Through a Memorandum of Agreement between the NPS and the PNP, police officers are now empowered to act as Police Prosecutor Assistants (PPA) and assist in the prosecution of any criminal case filed by the PNP. PPAs can prosecute, with the conformity and approval of the public prosecutor, criminal actions falling within the jurisdiction of the Municipal trial Courts or Municipal Circuit Trial Courts. PPAs are also allowed to actively participate in the prosecution of cases falling within the

jurisdiction of the Regional Trial Court where they will be designated.

The second multi-institutional reform initiative is the reactivation of the **Justice Sector Coordinating Council (JSCC)**, which hinges on the coordination and cooperation of the law enforcement, prosecution and the courts.

The Honorable Chief Justice Ma. Lourdes Sereno, Secretary of Interior and Local Government Mar Roxas and myself saw the need to bond together to undertake the task of reforming the justice system through a concerted action that will strengthen not only the institutions that we lead, but also the manner in which justice is dispensed. Through the JSCC, we successfully identified areas for coordination, including continuous trial, joint trainings for JSCC member institutions, single-marking system for evidence to be presented in court, automation of processes and procedures through the electronic notification, establishment of Justice Zones, synchronization of calendars to reduce court postponements, and jail decongestion through the timely release of detainees.

Through the JSCC, we were also able to establish the "Justice Zone Project", which aims to further speed up the resolution of cases by facilitating the more efficient coordination of the courts, the police, and lawyers. The very first Justice Zone was launched in Quezon City last year. As a result, judges, PAO lawyers, and prosecutors in Quezon City court branches have been able to minimize the number of case postponements since the concerned individuals have had greater ease in coordinating their schedules.

The final multi-institutional reform initiative I want to mention today is the Integrity Management Program (IMP), which involves the identification of risk areas in critical NPS processes such as inquest, preliminary investigation and case management. To this end, IMP also aims to develop strategies to minimize the risk of inefficiency, corruption and other factors that inhibit the performance of prosecutors.

## **II. Initiatives focused on the human factor**

But institutional reforms can only go so far if the government's most important resource, its public servants, is left behind in terms of reformation.

It is no secret that one of the greatest challenges faced by our institutions are questions raised about the integrity of those charged with the administration of justice. In fact, a few weeks ago, you may have heard that one Assistant State Prosecutor was preventively suspended in relation to cases filed against him arising from a successful entrapment operation that I myself gave the go signal for.

That is the first step to reclaiming the good name of the DOJ and the NPS and, in so doing, achieving one of the most critical reforms in our criminal justice system: to emphasize that wrongdoing and worse, infidelity to the service and the oaths that we took as lawyers and as public officers, will not be tolerated.

Early on, we launched the **Code of Conduct in the Prosecution Service**, which echoed the tenets of the Code of Professional Responsibility. In so doing, we emphasized the utmost importance of adhering to ethical standards.

We also established **Internal Affairs Units**, which sought to create uniform and transparent procedures for the consideration, investigation and resolution of administrative and disciplinary proceedings against members of the NPS and their prosecution staff.

We further ensured the integrity and independence of our prosecutors by disentangling them from local politics. We endeavored to accomplish this by: (1) making it a policy not to consider endorsements from politicians when considering applicants for appointment or promotion in the NPS; (2) we laid down the policy of prohibiting our prosecution units, prosecutors and prosecution staff from receiving allowances and other forms of benefit from local government units to ensure that they do not feel beholden to local politicians, which in turn might affect their independence and impartiality in the discharge of their mandate; and (3) we are currently working to improve the selection process for the promotion and original appointments in the NPS, to depoliticize the process, eliminate the patronage system, and emphasize merits of each applicant. We want the selection and

promotions process in order to be at least as effective as that employed in the selection for the members of the bench. After all, prosecutors are as necessary to the criminal justice system as judges. In fact, they might be considered as one of the first lines of defense against injustice, since no information can be filed in court unless it has passed through prosecutors. We want to be able to welcome bright lawyers into our ranks, who truly want to serve, without having the process politicized or otherwise compromised. We want the merits of each applicant – both in terms of capability and personal integrity – to be the highest consideration. In fact, that is one of the ways in which we hope to build the capacity of the NPS as an institution, through the strengths of each of its members. Hence, the selection and promotions process is important in this effort.

But ensuring the integrity, probity and independence of our prosecutors is only half the battle. The other half involves ensuring their capability and competence.

We plan to establish a **training center for prosecutors**, or what we are tentatively calling the “**NPS Academy**”. The center will be charged with the formulation and implementation of a continuing program of prosecutorial education for prosecutors and prosecutorial staff. It shall provide and implement a curriculum to upgrade the legal knowledge, moral fitness, probity, efficiency and capability of prosecutors.

Lastly, we launched strategic initiatives that seek to improve the operational efficiency of our prosecutors, such as the ongoing implementation of the **Strategic Performance Management System**, wherein appropriate performance indicators are employed in measuring prosecutor performance.

### **III. Policy and Legal Reforms**

However, there are many reforms that need more than just action on the part of the Executive or the Judiciary. There are reforms that need to go into the very spirit and policy behind our laws, not just in the definition of the crime and its penalty, but also in the procedures we employ to enforce them.

The **Criminal Investigation Bill**, which we strongly advocate for and for which public hearings are currently ongoing, seeks to address the bottlenecks in the criminal justice process. Improving the preliminary investigation will result in institutional efficiency at the level of the investigating agencies as well as the courts.

The Criminal Investigation Bill seeks to more permanently institutionalize the role of prosecutors in the case build-up stage and it will integrate the functions of the prosecution and the investigator in gathering evidence and building up cases that will have a higher likelihood of successful prosecution in court.

It will cut down the procedure and rationalize the process into two phases: First, the criminal investigation where the police and prosecutor will work closely together to gather evidence and build a case. The prosecutor will be tasked to determine whether or not the case shall be filed in court without need for an adversarial procedure. Second, the preliminary hearing where the trial judge will evaluate the complaint based on the preponderance of evidence and determine whether or not a full-blown criminal trial is warranted.

Statistics show that 61% of criminal case filings are dismissed. In order to address the high rate of case dismissal and discourage the indiscriminate filing of criminal cases, the threshold in the preliminary investigation stage will be raised from “probable cause” to “preponderance of evidence”. This will hopefully maximize the use of the government’s limited resources, and result in reduced case backlog and more efficient court processes.

It is believed that many cases that are filed in court do not result in conviction because of the huge evidentiary gap between probable cause and proof beyond reasonable doubt. The change in the evidentiary threshold, in addition to the enhanced collaboration between prosecutors and investigators in the evidence-gathering and case build-up stage seeks to improve the chances for successful prosecution while ensuring that it is not achieved at the expense of those who were legitimately aggrieved.

In 2011, we formed the **Criminal Code Committee (CCC)**, which is composed of representatives from the DOJ (and its attached agencies: the NBI, BI, Public Attorney’s Office, Office

of the Government Corporate Counsel, Office of the Solicitor General, Board of Pardons and Parole, and the Land Registration Authority), Supreme Court, and the PNP.

Through the CCC, we were able to bring the country's criminal justice stakeholders together to review existing laws and to craft a **new Criminal Code of the Philippines**. I am proud to report that in the span of just three short years, the CCC was able to complete and integrate drafts of Book 1 and Book 2 on 31 July 2014. The draft Criminal Code is "truly Filipino" and is an updated and simplified version of our 83-year-old Revised Penal Code. It is designed to be responsive to modern-day situations, improve the administration of justice in the country, and enhance access to justice for the poor and other marginalized sectors.

Some of the key changes in the draft Criminal Code, among others, are:

- The removal of Spanish terms like *reclusion perpetua*;
- The lowering of the age of criminal liability from 15 to 12 years old;
- The rationalization and re-categorization of penal provisions into three major titles, namely, Crimes Against Persons, Crimes Against Property, and Crimes Against the State;
- The modernization and consolidation of redundant penal laws;
- The delisting of outdated penal provisions;
- The inclusion of trans-border crimes; and
- The inclusion of conduct-based penal provisions.

The new Criminal Code is well on its way to becoming a reality. On 06 August 2013, House Bill No. 2300, otherwise known as the Philippine Code of Crimes, was filed by Congressman Niel C. Tupas, Jr. Likewise, the CCC's draft Criminal Code has been endorsed to both Houses of Congress. We now urge our legislators to consider and support these proposals as a testament of our commitment to the improvement of our country's criminal justice system.

Last but certainly not the least, we are in the process of establishing a long overdue **Criminal Justice Research and Training Institution**, which will be tasked to identify the current legal issues – both under domestic and international law – that need further study. The Criminal Justice Research and

Training Institution will be set up as the main think-tank for justice sector agencies so that they will have a more coherent approach to criminal justice issues. As the center for legislative measures, it will also be a resource for Congress in their deliberations and in the submission of policy papers in Congress.

## **Conclusion**

It goes without saying that we now live in a world that is markedly different than it was even fifty years ago. Even social norms are shifting and changing as we speak. Acts that were once criminalized in various jurisdictions, such as sexual relationships between individuals of the same sex, are now not only being tolerated but, in fact, are given legal recognition primarily through the legal protections now being accorded to same-sex marriages in many countries in the world.

Interestingly, Barack Obama in the United States recently talked about criminal justice in reference to his country's persistent race issues. He said that people all over the world must recognize that criminal justice is not something we can view in isolation. He said that any system that allows us to turn a blind eye to hopelessness and despair is not a justice system. Rather, it is an injustice system. Such a system is an extension and a reflection of some broader decisions that we are making as a society. Such widespread tolerance for injustice has to change.

Here in the Philippines, I echo his sentiment. It is but right that our laws and our policies keep on evolving.

To me, all of these elements in the theme for this Seminar remind us that, in the last decade, we have attained a level of maturity that is borne of the realization of the difference between a society ruled by corrupt and personal interests, and one that observes the Rule of Law. One is absolutely intolerable, while the other, while better, must still be judiciously tempered by principles of equity for justice to truly reign.

Members of the legal profession, and even the ordinary public, are quite familiar with the Latin maxim "Dura lex, sed lex", which has been applied to mean that though the law may be harsh, it must yet be followed strictly to the letter for it is the law. Perhaps, the perspective that should be taken is not so much as

equity being pitted against the law, but laws being written to allow for more instances when considerations of equity can work towards bringing about true justice. Thus far, unless the law provides for and allows it, equity finds little to no application to the criminal justice system because of the equally recognized doctrine that “whomever comes to equity must come with clean hands” or, simply, the “clean hands” maxim.

Yes, ours is a society of laws, but neither do we wish or deserve to live lives resembling those of the characters of *Les Misérables*, suffering under the tyranny of laws that are blind to equity. The punishment should not only fit the crime. Sometimes, justice – which includes true correction, rehabilitation and reintegration – requires that the punishment must also fit the criminal. I’m sure none of us really wish to live in a world where the Jean Valjeans of society are sentenced to several years in prison for merely stealing a loaf of bread to prevent the starvation of another, or where the Fantines, instead of obtaining welfare assistance and rescue from a life of sexual slavery, could be arrested for vagrancy and imprisoned.

Law is supposed to be the great equalizer, and courts are the arbiters of justice. Ideally, it is here that the rich and the poor, the powerful and the needy, can all appear and expect to be treated as equals. Yet, the reality is far from the ideal. Bridging the gap between the ideal and the real is the essence of this Seminar. This is the goal you should work towards: transforming reality closer to our ideals of a truly just society. After all, justice must be real time and must be felt by the common people

One thing none of you must forget, however, is this: reform does not begin or end with us public servants. It is as much your responsibility as ours.

Your admission to the Bar is the kindling we need to keep the future of our nation burning bright. Don’t let the cold grasp of greed and self-interest extinguish the fervor for what is right and just. That is your duty. The philosopher Immanuel Kant formulated the concept of a “categorical imperative” – that is, the obligation to do one’s duty for its own sake and not in pursuit of further ends. Thus, when you are made to choose between the mediocrity of being sellouts for fame, fortune, power or influence on the one hand, and the dignity and nobility of being an advocate

for the rule of law – I trust you to make the right choice. I trust and believe in the strength of your character. You should too.

The task of reforming the criminal justice system is daunting. It is difficult. It is frustrating. But it is necessary. And it is the only possible way we can respond to the changing needs of our society.

I now leave you with these thoughts and wish you all a very pleasant day. Godspeed and *mabuhay!*

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